

# Notice of Allowability

Application No.

10/726,605

Examiner

Elizabeth Houston

Applicant(s)

SHANLEY, JOHN F.

Art Unit

3731

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 03/27/07.
2. ☒ The allowed claim(s) is/are 38,40,42-51 and 57.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Cindy Lynch on 06/06/07.

The application has been amended as follows:

**CANCEL Claims 27-37, 41 and 52-56**

**Claim 57, line 6:** after "between the elongated struts", insert --- *each of the ductile hinges being in the shape of a curved beam along a hinge length, ---*

### REASONS FOR ALLOWANCE

2. The following is an examiner's statement of reasons for allowance: There is no prior art alone or in combination that discloses all of the features of the claimed invention specifically an expandable medical device comprising elongated struts or beams, a plurality of asymmetrical ductile hinges, and having an abrupt transition between the cross sectional area of the elongated beams and the cross section area of the ductile hinges on both circumferential sides of the beams.

3. In Klein '020 for example, Figure 18B does not disclose an abrupt transition on both circumferential sides but rather discloses an abrupt transition on one side and a

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gradual transition on the other. In Wijay '569, for example, Figures 5 and 6 do not disclose an abrupt transition on both circumferential sides of the beams and Figures 7 and 8 do not disclose hinges that are asymmetrically configured. Allen '455 and Sgro '365, for example, do not disclose hinges having an abrupt transition on both circumferential sides of the beams.

4. Regarding Lee '181, although it could be argued that Lee does in fact disclose an abrupt transition on both circumferential sides of the beams, Lee does not disclose ductile hinges having a first side surface placed in tension during compression of the device and a second side surface placed in tension during expansion of the device wherein the first side surface is smaller than the second side surface. For example if the ductile hinges were considered to be only parts 20 and 28, the surfaces would be the same length and the hinges would not be asymmetrical. If the ductile hinges were considered to be the entirety of the hinge including parts 20, 22 and 28, the outer surface would be the longer surface, which would be in compression during expansion rather than in tension during expansion. As to claim 57, Lee does not disclose hinges in the shape of a curved beam that are asymmetrical.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Houston whose telephone number is 571-272-7134. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

eh



(JACKIE) TAN-UYEN HO  
SUPERVISORY PATENT EXAMINER  
6/28/07